

EXHIBIT 5.2

THE TOHONO O'ODHAM NATION'S CAP CONTRACT, AS AMENDED

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CENTRAL ARIZONA PROJECT

AMENDMENT TO CONTRACT WITH THE TOHONO O'ODHAM NATION
FOR DELIVERY OF CENTRAL ARIZONA PROJECT WATER

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Contract No. PAPAGO121180A
Amendment No. 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CENTRAL ARIZONA PROJECT

AMENDED CONTRACT WITH THE TOHONO O'ODHAM NATION
FOR DELIVERY OF CENTRAL ARIZONA PROJECT WATER

1 PREAMBLE: This AMENDED CONTRACT TO CONTRACT NO. PAPAGO121180A ("Amended Contract") is made and entered into this 5th day of May, 2006, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat 1057), the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. § 1501), as amended, the Southern Arizona Water Rights Settlement Act of 1982 (P.L. 97-293, 96 Stat. 1274), as amended, the Arizona Water Settlements Act enacted December 10, 2004 ("Settlements Act") and the various authorities and responsibilities of the Secretary of the Interior ("Secretary") in relation to Indians and Indian Tribes as contained in Title 25 U.S.C. and 43 U.S.C. § 1457, and the Tohono O'odham Settlement Agreement, between the UNITED STATES OF AMERICA ("United States"), acting through the Bureau of Reclamation, for and on behalf of the Secretary, and the TOHONO O'ODHAM NATION ("Nation"), formerly known as the "Papago Tribe" organized under a constitution approved in accordance with section 16 of the Act of June 18, 1934 (25 U.S.C. 476). In this Amended Contract, the United States

and the Nation are each individually sometimes hereinafter called "Party" and sometimes collectively called "Parties".

WITNESSETH THAT:

2 EXPLANATORY RECITALS:

2.1 WHEREAS, on December 11, 1980, the Nation and the United States entered into Contract No. PAPAGO121180A, hereinafter referred to as the "1980 Contract" for the delivery of Central Arizona Project water to sustain the Nation's agricultural base and for other tribal homeland purposes; and

2.2 WHEREAS, the United States, the State of Arizona, the Nation, the City of Tucson, Asarco Incorporated, Farmers Investment Company, and the San Xavier allottees entered into the Tohono O'odham Settlement Agreement to settle the disputes concerning the nature and extent of the rights to water of the Nation; and

2.3 WHEREAS, on December 10, 2004, Congress enacted the Arizona Water Settlements Act, hereinafter referred to as the "Settlements Act;" and

2.4 WHEREAS, the Settlements Act was created to provide for adjustments to the Central Arizona Project in Arizona, to authorize the Gila River Indian Community water rights settlement, to reauthorize and amend the Southern Arizona Water Rights Settlement Act of 1982, and for other purposes; and

2.5 WHEREAS, Title III of the Settlements Act is the Southern Arizona Water Rights Settlement Amendments Act of 2004, which requires the Secretary, pursuant to section 309(g), to amend the 1980 Contract; and

2.6 WHEREAS, the Nation and the Secretary desire to amend the 1980 Contract to conform with the Settlements Act and the Tohono O'odham Settlement Agreement; and

2.7 WHEREAS, this Amended Contract will supersede and replace the 1980 Contract, in its

entirety;

NOW THEREFORE, the Parties agree as follows:

3 AMENDED CONTRACT PURPOSE: The purpose of this Amended Contract is to conform the 1980 Contract with the terms and conditions of the Settlements Act and the Tohono O'odham Settlement Agreement and to supersede and replace the 1980 Contract.

4 STATUS OF THE 1980 CONTRACT: The 1980 Contract is superseded and replaced by this Amended Contract when it becomes effective on the Enforceability Date, as defined in subsection 5.26 herein, and as set forth in section 302 of the Settlements Act.

5 DEFINITIONS: The first letters of defined terms are capitalized in this Amended Contract. When used herein, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the following defined terms shall apply:

5.1 Available CAP Supply means for any given Year all Fourth Priority Water available for delivery through the CAP System, water available from CAP dams and reservoirs other than Modified Roosevelt Dam, and Return Flows captured by the Secretary for CAP use.

5.2 Basin Project Act means the Colorado River Basin Project Act, 82 Stat. 885, dated September 30, 1968, as amended.

5.3 CAP means the Central Arizona Project, the reclamation project authorized and constructed by the United States in accordance with Title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

5.4 CAP Contract means a long-term contract, as that term is used in the CAP Repayment Stipulation, between any person or entity and the United States for the delivery of water through the CAP System.

5.5 CAP Contractor means any person or entity having a CAP Contract.

5.6 CAP Fixed OM&R Charge means Fixed OM&R Charge as that term is defined in the

CAP Repayment Stipulation.

5.7 CAP Indian Priority Water means water having an Indian delivery priority as described in subsection 6.8 herein.

5.8 CAP Master Repayment Contract means the Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1), and any amendment or revision thereof.

5.9 CAP M&I Priority Water means water having a municipal and industrial delivery priority as described in subsection 6.8 herein.

5.10 CAP NIA Priority Water means water having a non-Indian agricultural delivery priority as described in subsection 6.8 herein.

5.11 CAP Operating Agency means the entity or entities authorized to assume responsibility for the care, operation, maintenance and replacement of the CAP System. As of September 13, 2004, CAWCD is the CAP Operating Agency.

5.12 CAP Pumping Energy Charge means the Pumping Energy Charge as that term is defined in the CAP Repayment Stipulation.

5.13 CAP Repayment Stipulation means the Revised Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgement Upon the Satisfaction of Conditions, entered in Central Arizona Water Conservation District v. United States, et al., No. CIV 95-625-TUC-WDB EHC, No. CIV 95-1720-PHX-EHC (Consolidated Action), United States District Court for the District of Arizona, and the order dated April 29, 2003, entered therein and any amendment or revision thereof.

5.14 CAP Service Area means the geographical area comprised of Maricopa, Pinal, and Pima Counties, Arizona, in which the Central Arizona Water Conservation District delivers Central

Arizona Project water and any expansion of that area under applicable law.

5.15 CAP Subcontract means a long-term subcontract, as that term is used in the CAP Repayment Stipulation, among any person or entity, the United States, and CAWCD for the delivery of water through the CAP System.

5.16 CAP Subcontractor or Subcontractor means the person, agency or entity holding a subcontract between such party and CAWCD providing for the delivery of Project Water.

5.17 CAP System means the Mark Wilmer Pumping Plant, the Hayden Rhodes Aqueduct, the Fannin-McFarland Aqueduct, the Tucson Aqueduct, and associated pumping plants and appurtenant works of the Central Arizona Project aqueduct system and any extensions, addition thereto, or replacement features thereof.

5.18 CAWCD means the Central Arizona Water Conservation District.

5.19 Central Arizona Project or Project or CAP means that reclamation project authorized and constructed by the United States pursuant to Title III of the Colorado River Basin Project Act of September 30, 1968 (43 U.S.C. §§ 1501 et seq.), 82 Stat. 885, as amended.

5.20 Community means the Gila River Indian Community, a government composed of members of the Pima Tribe and the Maricopa Tribe and organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

5.21 Contracting Officer means the Secretary or his or her authorized designee acting on his or her behalf.

5.22 Cooperative Fund means the cooperative fund established by section 313 of the 1982 Act and reauthorized by section 310 of the Settlements Act.

5.23 Delivery Point(s) means the point(s) on the Nation's Reservation that are reasonably required, by agreement of the Contracting Officer and the Nation, or selected by the Secretary, to permit the Nation to put the Project Water to its intended use.

5.24 Distribution Works mean those facilities constructed or financed by the United States for the primary purpose of distributing Project Water to the Delivery Point(s) within the Nation's Reservation after said Project Water has been transported or delivered through the Main System.

5.25 Eastern Schuk Toak District means the portion of the Schuk Toak District (1 of 11 political subdivisions of the Nation established under the constitution of the Nation) that is located within the Tucson management area as defined in section 303(48) of the Settlements Act.

5.26 Enforceability Date means the date on which Title III of the Settlements Act entitled "Southern Arizona Water Rights Settlement Amendments Act of 2004" takes effect.

5.27 Excess CAP Water means Excess Water as that term is defined in the CAP Repayment Stipulation.

5.28 Excess CAP Water Contract means a contract between any person or entity and CAWCD for the delivery of Excess CAP Water.

5.29 Excess CAP Water Contractor or Excess CAP Water Contractors means one or more persons or entities having an Excess CAP Water Contract.

5.30 Exhibit A is the Secretary's Shortage Sharing Approach Under 1980 Contract as referred to in subsection 6.8 herein.

5.31 Fourth Priority Water means Colorado River water available for delivery within the State of Arizona for satisfaction of entitlements: (1) pursuant to contracts, Secretarial reservations, perfected rights and other arrangements between the United States and water users in the State of Arizona entered into or established subsequent to September 30, 1968 for use on federal, State or privately owned lands (for a total quantity not to exceed 164,652 acre-feet of diversions annually); and (2) after first providing for delivery of water under 43 U.S.C. § 1524(e), pursuant to the CAP Master Repayment Contract for the delivery of Colorado River water to the Central Arizona Project, including use of Colorado River water on Indian lands.

5.32 Hohokam Agreement means the Agreement Among the United States, the Central Arizona Water Conservation District, the Hohokam Irrigation and Drainage District, and the Arizona Cities of Chandler, Mesa, Phoenix and Scottsdale, dated December 21, 1993.

5.33 Lower Colorado River Basin Fund means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

5.34 Main System means those principal works of the Project listed as follows: Mark Wilmer Pumping Plant, the Hayden-Rhodes Aqueduct, the Fannin-McFarland Aqueduct, the Tucson Aqueduct, Buttes Dam, and the Navajo Power Project, together with all appurtenances thereto and all lands, interests in lands, and rights-of-way for such works and appurtenances.

5.35 Nation's Reservation means all land within the exterior boundaries of (a) the Sells Tohono O'odham Reservation established by the Executive order of February 1, 1917, and the Act of February 21, 1931 (46 Stat. 1202, chapter 267); (b) the San Xavier Reservation established by the Executive order of July 1, 1874; (c) the Gila Bend Indian Reservation established by the Executive order of December 12, 1882, and modified by the Executive order of June 17, 1909; (d) the Florence Village established by Public Law 95-361 (92 Stat. 595); (e) all land acquired in accordance with the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798), if title to the land is held in trust by the Secretary for the benefit of the Nation; and (f) all other land to which the United States holds title in trust for the benefit of the Nation and that is added to the Nation's Reservation or granted reservation status in accordance with applicable Federal law before the Enforceability Date.

5.36 Non-Project Water means water acquired by the Nation other than from the Central Arizona Project.

5.37 OM&R means the care, operation, maintenance, and replacement of the Main System, or any part thereof.

5.38 Project Water means (i) Colorado River mainstream water, (ii) all other water conserved

and developed by Central Arizona Project dams and reservoirs and available for delivery by the United States, and (iii) Return Flow captured by the Secretary for Project use.

5.39 Return Flow means waste water, seepage, and ground water which originates or results from water contracted for from the CAP pursuant to this Amended Contract.

5.40 San Xavier Reservation means the San Xavier Indian Reservation established by the Executive Order of July 1, 1874.

5.41 Secretary means the Secretary of the United States Department of the Interior or his or her duly authorized representative.

5.42 Settlements Act means the Arizona Water Settlements Act enacted on December 10, 2004.

5.43 Time of Shortage is described in subsection 6.8 herein entitled, "Priority" which conforms to subsection 5.3 of the Tohono O'odham Settlement Agreement.

5.44 Tohono O'odham Settlement Agreement means means the Agreement, restated from the Agreement dated April 30, 2003 and revised to eliminate any conflicts with Public Law 108-451, 118 Stat. 3478 (including all the exhibits of and attachments to the Agreement) among the United States of America, the State of Arizona, the Tohono O'odham Nation, the City of Tucson, Asarco Incorporated, Farmers Investment Co., and two Allottee Classes in the Consolidated Litigation.

5.45 Water Right means any right in or to groundwater, surface water, or effluent under applicable law, as defined in section 303(53) of the Settlements Act.

5.46 Year means the twelve-month period between January 1 through the next succeeding December 31.

6 DELIVERY OF WATER:

6.1 Obligations of the United States. Subject to the terms, conditions, and provisions set forth in this Amended Contract, during such periods as it operates and maintains the Project, the

United States will deliver Project Water to the Nation. The United States will use reasonable diligence to make available to the Nation the quantities of water specified in the schedule submitted by the Nation and shall make deliveries of Project Water to the Nation to meet the Nation's water requirements within the constraints of and in accordance with subsection 6.6 herein. After transfer of OM&R to the CAP Operating Agency the United States will make deliveries of Project Water to the CAP Operating Agency for subsequent delivery to the Nation, as provided herein.

6.2 Term of Amended Contract. This Amended Contract is for permanent service, as that term is used in section 5 of the Boulder Canyon Project Act of 1928, 43 U.S.C. 617d, is without limit as to term, and shall otherwise conform to the provisions of section 104(d) of the Settlements Act.

6.3 Conditions Relating to Delivery. The Nation hereby agrees that the obligation of the United States to deliver water under this Amended Contract is subject to:

6.3.1 The availability of such water for use in Arizona under the provisions of the Colorado River Compact, executed November 24, 1922; the Boulder Canyon Project Act, 45 Stat. 1057, dated December 21, 1928; the Colorado River Basin Project Act, dated September 30, 1968, 82 Stat. 885; the contract between the United States and the State of Arizona dated February 9, 1944; the Opinion of the Supreme Court of the United States in the case of *Arizona v California et al.*, 373 U.S. 546, rendered June 3, 1963; and the March 9, 1964, Decree of that Court in said case, 376 U.S. 340, as now issued or hereafter modified.

6.3.2 The United States obligation under the Mexican Water Treaty, Executive A, Seventy-eighth Congress, second session, a treaty between the United States of America and the United Mexican States, signed at Washington, D.C., on February 3, 1944, relating to the utilization of the waters of the Colorado River and Tijuana River and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, second session, a protocol signed at Washington, D.C., on November 14, 1944, supplementary to the Mexican Water Treaty;

and obligations associated with Minutes of the International Boundary and Water Commission adopted pursuant to the Mexican Water Treaty.

6.3.3 The express understanding and agreement by the Nation that this Amended Contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and third, for power; and furthermore, that this Amended Contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and the Nation shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction management, and operation of Hoover Dam, Lake Mead, canals and other works and the storage, diversion, delivery, and use of water to be delivered to the Nation hereunder.

6.3.4 The right of the United States or the CAP Operating Agency temporarily to discontinue or reduce the amount of water to be delivered hereunder whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance, or repairs or any works whatsoever affecting, utilized or, in the opinion of the Secretary, necessary for delivery of water hereunder, it being understood that so far as feasible the United States or the CAP Operating Agency will give thirty (30) days notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. Neither the United States, its officers, agents, employees, successors, or assigns, nor the CAP Operating Agency, its officers, agents, employees, successors, or assigns shall be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction in delivery of water occurs.

6.3.5 Measures shall be in effect, adequate in the judgement of the Secretary, to provide for the internally integrated management and control of surface and ground water within the Nation's Reservation to the end that ground water withdrawals are managed on a responsible basis.

6.3.6 The canals and Distribution Works through which Project Water is conveyed after its delivery to the Nation shall be maintained with linings adequate in the Secretary's judgement to prevent excessive conveyance losses; provided, however, that the Nation shall be relieved from this obligation if the United States does not make funds for this purpose available to the Nation following a timely request for such funds.

6.3.7 The Nation shall not pump nor permit others to pump groundwater from within the exterior boundaries of the Nation's Reservation for use outside said Reservation unless the Secretary and the Nation agree, or shall have previously agreed, that a surplus of groundwater exists and drainage is required; provided, however, that where such pumping is presently permitted pursuant to a contract, said pumping may continue through-out the life of said contract; provided, further, that such pumping may be permitted in other and additional cases subject to the approval of the Secretary.

6.4 Exchanges, Leases, and Other Agreements. The Nation may, with the approval of the Secretary assign, exchange, or otherwise temporarily dispose of CAP water to which the Nation is entitled under this Amended Contract. With the exception of the 8,000 acre-feet per Year of the Nation's CAP water for the Sif Oidak District, the Nation may, with the approval of the Secretary, lease and enter into options to lease its CAP water.

6.4.1 The Nation may, with the approval of the Secretary renegotiate any lease at any time during the term of the lease if the term of the renegotiated lease does not exceed 100 years.

6.4.2 Subject to the provisions of sections 309 and 310 of the Settlements Act, the Nation shall be entitled to all moneys or other consideration due to the Nation under any leases and

any options to lease or exchanges or options to exchange the Nation's CAP water entered into by the Nation.

6.4.3 The United States shall have no trust obligation or other obligation to monitor, administer, or account for any consideration received by the Nation under those leases or options to lease and exchanges or options to exchange.

6.4.4 No CAP water may be leased, exchanged, forborne or otherwise transferred by the Nation for any direct or indirect use outside the State of Arizona.

6.4.5 CAP water scheduled for delivery in any Year under this Amended Contract that the Nation does not use may be made available by the Contracting Officer to other users, or the Contracting Officer may request that the CAP Operating Agency make such water available to other users; provided, however, that the Nation shall first have an opportunity to enter into contracts to lease, options to lease, contracts to exchange or options to exchange or resell such water as provided in this Amended Contract.

6.4.6 None of the Nation's CAP water may be permanently alienated.

6.4.7 The provisions of this Amended Contract shall not be applicable to or affect Non-Project Water or Water Rights now owned or hereafter acquired by the Nation.

6.4.8 The Nation may exchange CAP water and may change times and places of delivery of CAP water, subject to the approval of the Secretary.

6.4.9 The Nation shall be entitled to enter into contracts for Excess CAP Water, as provided in the CAP Repayment Stipulation.

6.4.10 Nothing in this Contract shall be construed as a limitation on the Nation's ability to enter into any agreement with the Arizona Water Banking Authority, or its successor agency or entity, in accordance with State law.

6.4.11 All of the Nation's CAP water shall be delivered through the CAP System;

provided, however, that in the event the delivery capacity of the CAP System is significantly reduced or is anticipated to be significantly reduced for an extended period of time or the CAP System is destroyed, the Nation shall have the same CAP delivery rights as other CAP Contractors and CAP Subcontractors, if the CAP Contractors or CAP Subcontractors are allowed to take delivery of water other than through the CAP System.

6.4.12 With the exception of the 8,000 acre-feet of the Nation's CAP water for the Sif Oidak District which is allocated solely for agricultural use within the Sif Oidak District, the Nation may use the Nation's CAP water on or off the Nation's Reservation for any purpose of the Nation consistent with the Settlements Act. Such purposes include any agricultural, municipal, domestic, industrial, commercial, mining, underground storage, instream flow, riparian habitat maintenance, or recreational use, whether the Nation's water supplies were delivered by the Secretary or pumped by the Nation.

6.4.13 The Secretary or the CAP Operating Agency shall deliver the Nation's CAP water in accordance with water delivery schedules provided by the Nation to the Secretary and the CAP Operating Agency pursuant to subsection 6.6 herein, or pursuant to lease or exchange agreements approved by the Secretary.

6.4.14 With the exception of the 8,000 acre-feet of the Nation's CAP water for the Sif Oidak District, if the Nation's CAP water is to be delivered for use off the Nation's Reservation, neither the Secretary nor the CAP Operating Agency shall be obligated to make such deliveries if, in the judgment of the CAP Operating Agency or of the Secretary, the delivery schedule for such off-Reservation use would limit deliveries of CAP water to other CAP Contractors, CAP Subcontractors, or Excess CAP Water Contractors to a degree greater than would delivery of the Nation's CAP water to the Nation's Reservation; provided, however, that Excess CAP Water Contracts first entered into after the off-Reservation delivery of the Nation's CAP water has been established shall not limit such

delivery. For purposes of the preceding sentence, an Excess CAP Water Contract for delivery of water within a given reach of the CAP System shall be considered as "first entered into" if the Excess CAP Water Contractor did not hold an Excess CAP Water Contract for the delivery of water within the same reach of the CAP System in any prior Year.

6.4.15 The Nation shall schedule delivery of the Nation's CAP water in accordance with this Amended Contract. If the combined delivery requests for all CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors similarly located on the CAP System exceed the delivery capacity of the CAP System, then the CAP Operating Agency will consult with all affected CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors and shall coordinate any necessary schedule reductions until all schedules can be satisfied. Neither the Secretary nor the CAP Operating Agency may reduce the Nation's delivery schedule for any month unless and until the requested monthly delivery schedules for all similarly located CAP Contractors, CAP Subcontractors and Excess CAP Water Contractors have been reduced to the same percentage of their annual CAP delivery schedules that the Nation requested in that month, or in the case of the Ak-Chin Indian Community by the maximum amount allowed by law. Thereafter, if further reductions are needed because of limitations on the delivery capacity of the CAP System, the Nation's requested monthly delivery schedule will not be reduced unless and until the requested monthly delivery schedules for all similarly located CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors have been reduced to the same percentage of their annual CAP delivery schedules as the Nation or in the case of the Ak-Chin Indian Community by the maximum amount allowed by law. A CAP Contractor, CAP Subcontractor, or Excess CAP Water Contractor shall be considered "similarly located" for purposes of this section if the CAP delivery schedule requested by that CAP Contractor, CAP Subcontractor, or Excess CAP Water Contractor will affect the quantity of the Nation's CAP water available for delivery to the Nation.

6.4.16 With the exception of the 8,000 acre-feet per Year of the Nation's CAP water for the Sif Oidak District, the Nation may use the CAP water supplies provided under this Amended Contract within the CAP Service Area, in accordance with the Settlements Act.

6.4.17 Any CAP water received by the Nation in exchange for effluent shall not be deducted from the Nation's contractual entitlement under this Amended Contract.

6.5 Delivery Entitlements and Obligations.

6.5.1 The Secretary shall deliver annually from the CAP System, a total of 37,800 acre-feet of water suitable for agricultural use, of which:

6.5.1.1 27,000 acre-feet shall be deliverable for use to the San Xavier Reservation or otherwise be used in accordance with section 309 of the Settlements Act; and

6.5.1.2 10,800 acre-feet shall be deliverable for use to the Eastern Schuk Toak District or otherwise be used in accordance with section 309 of the Settlements Act; and

6.5.2 In addition to the delivery of water described in 6.5.1 herein, the Secretary shall deliver annually from the CAP System, a total of 28,200 acre-feet of NIA Priority Water suitable for agricultural use, of which:

6.5.2.1 23,000 acre-feet shall be delivered to the San Xavier Reservation or otherwise be used in accordance with section 309 of the Settlements Act; and

6.5.2.2 5,200 acre-feet shall be delivered to the Eastern Schuk Toak District or otherwise be used in accordance with section 309 of the Settlements Act.

6.5.3 The Secretary shall deliver the 66,000 acre-feet per year of CAP water described in 6.5.1 and 6.5.2 herein, or an equivalent quantity of water from any appropriate source if the Secretary is unable during any Year to deliver annually from the main project works of the CAP any portion of the 66,000 acre-feet, notwithstanding any declaration by the Secretary of a water shortage on the Colorado River or any other occurrence affecting water delivery caused by an act or omission

of the Secretary, the United States or any officer, employee, contractor, or agent of the Secretary or United States; provided, however, that the Secretary shall not acquire any water that would cause depletion of groundwater supplies or aquifers in the San Xavier Reservation or the Eastern Schuk Toak District. In accordance with the provisions of the section 305(d) of the Settlements Act, the Secretary shall provide compensation if the Secretary is unable to acquire and deliver sufficient quantities of water under subsections 6.5.1 and 6.5.2 herein.

6.5.4 In addition to the delivery of water described in subsections 6.5.1 and 6.5.2 herein, the Secretary shall deliver 8,000 acre-feet annually to the Sif Oidak District; provided, however, that certain terms and conditions of this Amended Contract do not apply or apply differently to this CAP water, as set forth in subsections 6.4, 6.4.12, 6.4.14, 6.4.16, 9.6, and section 13, herein.

6.6 Procedure For Ordering Water.

6.6.1 The Nation will, in accordance with the procedures hereinafter set out, submit written schedules to the Contracting Officer showing the quantities of water requested for delivery.

6.6.1.1 On or before October 1 of each Year, the Nation shall submit in writing to the Contracting Officer a water delivery schedule indicating the amount of CAP water desired by the Nation during each month of the following Year along with a preliminary schedule of water desired for the succeeding two (2) Years.

6.6.1.2 Upon receipt of the schedule, the Contracting Officer shall review it and, after consultation with the CAP Operating Agency and the Nation, shall make only such modifications in it as are necessary to ensure that the amounts, times and rates of delivery to the Nation will be consistent with the provisions of section 6.3 herein. On or before December 1 of each Year, the Contracting Officer shall determine and furnish to the Nation the water delivery schedule for the next succeeding Year which shall show the amounts of water to be delivered to the Nation during each month of that Year.

6.6.2 A water delivery schedule may be amended by the Contracting Officer upon the Nation's written request. Proposed amendments shall be submitted by the Nation to the Contracting Officer within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the Contracting Officer in like manner as the schedule itself.

6.6.3 The Nation shall hold the United States, its officers, agents, and employees, harmless on account of damage or claim of damage of any nature arising out of or connected with the actions of the United States regarding water delivery schedules furnished to the Nation.

6.6.4 In lieu of the Nation submitting water delivery schedules to the Contracting Officer for approval, the Contracting Officer reserves the right to direct the Nation to submit such schedules to the CAP Operating Agency under such criteria as the Contracting Officer determines to be appropriate, after consultation with the Nation and the CAP Operating Agency and so long as the Nation's rights to require the delivery of CAP water are not thereby adversely impacted or diminished.

6.7 Points of Delivery - Measurement and Responsibility for Distribution of Water.

6.7.1 The Nation's CAP water to be furnished to the Nation pursuant to this Amended Contract will be delivered (i) at the turnout(s) from the CAP System to the Distribution Works as agreed upon in writing by the Contracting Officer and the Nation or, in the event they are unable to agree, as selected by the Secretary and (ii) at such other points as may otherwise be agreed upon or approved by the Secretary.

6.7.2 All water delivered to the Nation shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or the CAP Operating Agency. Upon request of the Nation, the accuracy of such measurements will be investigated by the Contracting Officer or the CAP Operating Agency and the Nation, and any errors appearing therein adjusted; provided, however, that in the event the Parties cannot agree on the

required adjustment, the Contracting Officer's determination shall be conclusive.

6.7.3 Neither the United States nor the CAP Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of water beyond the delivery point(s) as specified in section 305(a)(1) of the Settlements Act. The Nation shall hold the United States and the CAP Operating Agency harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the Nation's control, carriage, handling, use, disposal, or distribution of such water beyond said delivery point(s).

6.8 Priority.

6.8.1 In time of shortage the Available CAP Supply shall be distributed as described in this section 6.8.

6.8.2 For purposes of administering this Amended Contract, a time of shortage shall be a Year when:

6.8.2.1 On or before June 1 of each Year beginning in the Year following the Year in which the Enforceability Date occurs, the Secretary shall announce the Available CAP Supply for the following Year in a written notice to the CAP Operating Agency and to each CAP Contractor.

6.8.2.2 Prior to January 1, 2044, any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements to (i) three hundred forty-three thousand seventy-nine (343,079) acre-feet of CAP Indian Priority Water; (ii) six hundred thirty-eight thousand eight hundred twenty-three (638,823) acre-feet of CAP M&I Priority Water; and (iii) up to one-hundred eighteen (118) acre-feet of CAP M&I Priority Water converted from CAP NLA Priority Water under the San Tan Irrigation District's CAP Subcontract.

6.8.2.3 On or after January 1, 2044, any Year in which the Available CAP

Supply for that Year is insufficient to satisfy all of the entitlements to (i) three hundred forty-three thousand seventy-nine (343,079) acre-feet of CAP Indian Priority Water; (ii) six hundred thirty-eight thousand eight hundred twenty-three (638,823) acre-feet of CAP M&I Priority Water; (iii) up to forty-seven thousand three hundred three (47,303) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water pursuant to the Hohokam Agreement; and (iv) up to one hundred eighteen (118) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

6.8.3 In time of shortage the initial distribution of water shall be determined in the following manner:

6.8.3.1 If the available CAP Supply is equal to or less than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then 36.37518% of the Available CAP Supply shall be available for delivery as CAP Indian Priority Water and the remainder shall be available for delivery as CAP M&I Priority Water.

6.8.3.2 If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water shall be determined in accordance with the following equation and the remainder shall be available for delivery as CAP M&I Priority Water:

$$I = \{[32,770 \div (E - 853,079)] \times W\} + (343,079 - \{[32,770 \div (E - 853,079)] \times E\})$$

Where

I = the quantity of water available for delivery as CAP Indian Priority Water

E = the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subsections 6.8.2.2 and 6.8.2.3, whichever is applicable; and

W = the Available CAP Supply

Examples:

A. If, before January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subsection 6.8.2.2 were nine hundred eighty-one thousand nine hundred two (981,902) acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water would be ninety-three thousand three hundred three (93,303) acre-feet plus 25.43800% of the Available CAP Supply.

B. If, after January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subsection 6.8.2.3 were one million twenty-nine thousand three hundred twenty-three (1,029,323) acre-feet (343,079 + 638,823 + 43,303 + 118), then the quantity of water available for delivery as CAP Indian Priority Water would be one hundred fifty-one thousand six hundred ninety-one (151,691) acre-feet plus 18.59354% of the Available CAP Supply.

6.8.4 In time of shortage unscheduled CAP water shall be redistributed in the following manner:

6.8.4.1 Any water available for delivery as CAP Indian Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP Indian Priority Water shall become available for delivery as CAP M&I Priority Water.

6.8.4.2 CAP M&I Priority Water shall be distributed among those entities with contracts for the delivery of CAP M&I Priority Water in a manner determined by the Secretary and the Operating Agency in consultation with CAP M&I water users to fulfill all delivery requests to the greatest extent possible. Any water available for delivery as CAP M&I Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP M&I Priority Water shall become available for delivery as CAP Indian Priority Water.

6.8.4.3 Any water remaining after all requests for delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied shall become available for delivery as CAP NIA Priority Water.

6.8.4.4 Nothing in this subsection 6.8 shall be construed to allow or authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such contracts, CAP water in amounts greater than such CAP contractor's entitlement.

6.8.5 The distribution of CAP Indian Priority Water among CAP Indian Priority Water users shall be accomplished as follows:

6.8.5.1 In consideration of the agreement by the Community and the Nation to incur additional shortages beyond those that it would have incurred under the approach described in Exhibit A attached hereto, the Secretary shall first make available to the Community and the Nation any water made available for delivery as CAP Indian Priority Water under subsection 6.8.4.2, to the extent necessary in any Year, to offset the additional shortages borne by the Community and the Nation. After the additional shortages borne by the Community and the Nation have been fully offset, the Secretary shall then make any remaining water available in accordance with all CAP Contracts and CAP Subcontracts for the delivery of CAP Indian Priority Water in including the Community and the Nation, in proportion to their contractual entitlements to CAP Indian Priority Water.

6.8.5.2 If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet but less than the sum of the entitlements described in subsections 6.8.3.1 or 6.8.3.2, as applicable, then, to the extent that sufficient quantities of CAP water, including all CAP M&I Priority Water available for delivery as CAP Indian Priority Water in accordance with subsection 6.8.4.2, are not available to meet orders for CAP Indian Priority Water, the Nation shall incur the portion of such shortage of CAP Indian Priority Water determined under the formula stated in Exhibit A attached hereto.

6.8.5.3 If the Available CAP Supply is greater than eight hundred one thousand five hundred seventy-four (801,574) acre-feet but less than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, up to fifty-one thousand five hundred five (51,505) acre-feet of the shortage of CAP Indian Priority Water shall be shared among the Community, the Ak-Chin Indian Community, the Salt River Pima Maricopa Indian Community, the Nation, and the San Carlos

Apache Tribe. During a Time of Shortage described in this subsection 6.8.5.3, the CAP Indian Priority Water available to the Nation shall be determined pursuant to the formula attached as Exhibit A, and the CAP Indian Priority Water available to the tribes referenced above, other than the Community and the Nation, shall be determined in accordance with the provisions of their respective CAP Contracts and any amendments thereto.

6.8.5.4 If the Available CAP Supply is less than eight hundred one thousand five hundred seventy-four (801,574) acre-feet, then the CAP Indian Priority Water determined to be available pursuant to subsection 6.8.3.1 shall be distributed to the Nation by the Secretary based on the ratio of the amount of water delivered pursuant to the Nation's CAP Contract in the latest non-shortage Year relative to the total quantity of water delivered to all CAP Contractors for CAP Indian Priority Water in that same Year. However, if during the last non-shortage Year the Nation had not completed construction of the distribution system necessary to take and use its CAP entitlement, the Secretary will impute in the calculation the quantity of CAP water that the Nation would have been expected to take had the distribution system, as it exists at the Time of Shortage, been in place during such non-shortage Year. For example, if the Secretary determines that: (1) in the last non-shortage Year the Nation used only fifteen thousand (15,000) acre-feet of its entitlement because the Nation's CAP distribution system was only partially complete and would permit the delivery of only fifteen thousand (15,000) acre-feet of its entitlement; (2) as of the then current Year, additional construction of the Nation's CAP distribution system has been completed; and (3) the Nation can take and use, and has ordered for delivery, thirty thousand (30,000) acre-feet of CAP water; then the Secretary shall use an imputed quantity of thirty thousand (30,000) acre-feet for the Nation when pro-rating the available water supply among the CAP Contractors for CAP Indian Priority Water.

6.8.5.5 If any Indian Tribe, other than the Community and the Nation, enters into a new contract or amends the term or quantity of water in an existing contract for the delivery or

exchange of CAP water, then the Secretary shall require such Indian Tribe to include in such new contract or amendment, a provision to share, on a proportional basis (the proportion shall be based on a ratio with the numerator being the amount of such tribe's entitlement to CAP Indian irrigation water and the denominator being the sum of the amounts of all tribes' entitlements to CAP Indian irrigation water) with the Community and the Nation, the additional shortage that the Community and Nation are bearing pursuant to subsections 6.8.5.2 and 6.8.5.3; provided, however, that no tribe shall bear more shortage than it would have borne under its existing contract at a CAP water supply of 801,574 acre-feet. In that event, the Nation and the Secretary shall modify this Amended Contract to reflect such sharing of shortages by the other Indian tribes.

6.8.5.6 Subsection 6.8.5.5 shall not apply to the renewal of any contract existing on December 31, 2002, with an Indian tribe or nation that the Secretary entered into pursuant to an Indian water settlement approved by act of Congress.

6.8.5.7 The shortage sharing criteria in subsection 6.8 shall not apply to water acquired from the Yuma-Mesa Division of the Gila Project pursuant to the Ak-Chin Indian Community Water Rights Settlement Act, Public Law 98-530, or water acquired from the Wellton-Mohawk Irrigation and Drainage District pursuant to the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act, Public Law 100-512, both of which have a higher priority than Fourth Priority Water.

6.9 Secretarial Control of Return Flow. The Secretary reserves the right to capture all Return Flow flowing from the exterior boundaries of the Nation's Reservation as a source of supply and for distribution to and use of the CAP to the fullest extent practicable. The Nation may recapture and reuse or sell Return Flow within the Nation's Reservation; provided, however, that such Return Flow captured within the Nation's Reservation may not be sold for use outside the Nation's Reservation unless the Secretary has given prior written approval.

6.10 Exchange Water. Where the Secretary determines that the Nation is able to receive Project Water in exchange for or in replacement of existing supplies of water from surface sources other than the Colorado River to provide water supplies for water users upstream from the confluence of the Salt and Verde Rivers and Buttes Dam site, if such dam is then existent, the Secretary may require and the Nation agrees to accept said Project Water in exchange for or in replacement of said existing supplies pursuant to the provisions of Section 304(d) of the Basin Project Act.

7 UNDERGROUND STORAGE AND RECOVERY PROJECTS: The Nation is authorized to establish direct storage and recovery projects in accordance with the Tohono O'odham Settlement Agreement. The Secretary shall have no responsibility to fund or otherwise administer such projects.

8 OTHER WATER: Nothing in this Amended Contract shall prevent the Nation from agreeing with a water user to receive water from an off-Reservation source where the water user does not condition delivery upon substitution for Project Water.

9 PAYMENTS:

9.1 Pursuant to section 309(g)(7) of the Settlements Act, the costs associated with the construction of the delivery and distribution system allocable to the Nation:

9.1.1 shall be nonreimbursable; and

9.1.2 shall be excluded from any repayment obligation of the Nation.

9.2 Pursuant to section 309(g)(8) of the Settlements Act, no CAP water service capital charges shall be due or payable for the Nation's CAP water, regardless of whether the CAP water is delivered for use by the Nation or is delivered pursuant to any leases or options to lease or exchanges or options to exchange the Nation's CAP water entered into by the Nation.

9.3 Pursuant to section 310(b)(1) and (2) of the Settlements Act and subject to the exceptions herein and in subsection 9.5, the Secretary shall be responsible for the payment of the

CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water.

9.3.1 Except for the Nation's CAP water leased by others, the Secretary shall pay to the CAP Operating Agency the CAP Fixed OM&R Charge associated with the delivery of the Nation's CAP water as follows:

9.3.1.1 from the Lower Colorado River Basin Development Fund, established by section 403 of the Basin Project Act, as authorized by subparagraph (A) of section 403(f)(2) of that Act and to the extent that funds are available in the Fund.

9.3.1.2 pursuant to and subject to the limitations on expenditures from the Cooperative Fund established in section 310(b) of the Settlements Act and to the extent that funds are not available from the Lower Colorado River Basin Development Fund, from the Cooperative Fund; or

9.3.1.3 in the event that there are no monies available from the Lower Colorado River Basin Development Fund or from the Cooperative Fund, then from the Nation.

9.3.2 Except for the Nation's CAP water leased by others, the Secretary shall pay to the CAP Operating Agency the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water as follows:

9.3.2.1 pursuant to and subject to the limitations on expenditures from the Cooperative Fund established in section 310(b) of the Settlements Act, from the Cooperative Fund; or

9.3.2.2 in the event that there are no monies available from the Cooperative Fund the from the Nation.

9.4 In those instances in which the monies are not available to the Secretary from the Lower Colorado River Basin Development Fund as set forth in subsection 9.3.1, or the Cooperative Fund as

set forth in subsection 9.3.1 and 9.3.2, and the Nation is responsible for making payments as provided herein, the following shall apply:

9.4.1 The Nation's CAP water shall not be delivered to the Nation unless the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of such water are paid in advance.

9.4.2 The annual CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water shall be paid in twelve (12) equal monthly installments and shall be paid on or before the first day of each month in order for the Nation to receive water deliveries in the succeeding month.

9.4.3 The Contracting Officer may direct that payments be received in other than the equal monthly installments described in subsection 9.4.2.

9.4.4 Unless otherwise agreed, differences between estimated and actual CAP Fixed OM&R Charge and the estimated and actual CAP Pumping Energy Charge shall be determined by the Contracting Officer and shall be adjusted in the next succeeding annual CAP Fixed OM&R Charge; provided, however, that if in the opinion of the Contracting Officer the amount of funds advanced by the Nation is likely to be insufficient to cover the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge during the Year, the Contracting Officer may increase the annual estimate of the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation CAP water by written notice thereof to the Nation, and the Nation shall forthwith increase its remaining monthly payments in such Year by the amount necessary to cover the insufficiency; provided, further, that unless otherwise agreed, if in the opinion of the Contracting Officer the amount of funds advanced by the Nation is likely to be greater than what is required to cover the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water during the Year, the Contracting Officer shall reduce the

remaining monthly payments on a pro rata basis to adjust the total payment for the Year to the revised estimate. The Nation agrees to make all advances or payments required under this section.

9.4.5 Pursuant to 25 U.S.C. 385 and regulations promulgated pursuant thereto (25 CFR Part 171), the Secretary may adjust the amount of the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge for which the Nation is responsible.

9.4.6 In the event the Nation fails or refuses to accept delivery at the Delivery Point(s) of the quantities of water available for delivery to and required to be accepted by it pursuant to this Amended Contract, or in the event the Nation fails in any Year to submit a schedule for delivery as provided in subsection 6.6, said failure or refusal shall not relieve the Nation of its obligation to make the payment required in this subsection 9.3.5. The Nation agrees to make payment therefor in the same manner as if said water had been delivered to and accepted by it in accordance with this Amended Contract except as provided in subsection 6.4.5; provided, however, that the Nation shall be relieved from such obligation to pay if Distribution Works are not in place to receive water because the United States has not made funds available to the Nation to construct Distribution Works or the United States has not constructed Distribution Works for the Nation.

9.4.7 If the Nation's CAP water is made available to others by the Contracting Officer or the CAP Operating Agency, the Nation shall be relieved of its payments hereunder and only to the extent of the amount paid to the Contracting Officer or the CAP Operating Agency by such other users, but not to exceed the amount the Nation is obligated to pay under this Amended Contract for said water.

9.4.8 In the event the Nation or the Contracting Officer and the CAP Operating Agency are unable to sell any portion of the Nation CAP water scheduled for delivery and not required by the Nation, the Nation shall be relieved of the CAP Pumping Energy Charges associated with the undelivered water.

9.4.9 In the event that a discontinuance or temporary reduction in deliveries of CAP water results in the delivery to the Nation of an amount less than what has been paid for in advance by the Nation, the Nation shall be given credit toward the next payment of the CAP Fixed OM&R Charge.

9.4.10 The Nation shall have no right to delivery of water from Project facilities during any period in which the Nation may be in arrears in the payment of any charges due to the Contracting Officer or the CAP Operating Agency. The Contracting Officer may sell to another entity any water determined to be available under the Nation's entitlement for which payment is in arrears or the Contracting Officer may request that the CAP Operating Agency sell such water; provided, however, that the Nation may regain the right to use any unsold portion of the water determined to be available under the original entitlement upon payment of all delinquent charges plus any difference between the contractual obligation and the price received in the sale of water by the Contracting Officer or the CAP Operating Agency and payment of charges for the current period.

9.4.11 The Nation shall be subject to interest, administrative, and penalty charges on delinquent CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water.

9.4.12 When a payment is not received by the due date, the Nation shall pay an interest charge for each day the payment is delinquent beyond the due date. The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

9.4.13 When a payment becomes 60 days delinquent, the Nation shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment.

9.4.14 When a payment is delinquent 90 days or more, the Nation shall pay an additional penalty charge of 6 percent per Year for each day the payment is delinquent beyond the due date.

9.4.15 The Nation shall pay any fees incurred for debt collection services associated with a delinquent payment.

9.4.16 When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment for the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water.

9.4.17 The obligation of the Nation to pay the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the Nation's CAP water to the Contracting Officer, or the CAP Operating Agency as provided in this Amended Contract, is a general obligation of the Nation notwithstanding the manner in which the obligation may be distributed among the Nation's water users and notwithstanding the default of individual water users in their obligations to the Nation.

9.5 The Nation shall require its contractors to pay the CAP Operating Agency the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge in any contracts, leases, options to lease or other agreements providing for the temporary delivery to, or use by, such contractors of any portion of the Nation's CAP water.

9.6 Payment Provisions for Sif Oidak District Water (Chuichu).

9.6.1 Subsection 9.4 of this Amended Contract shall apply to the 8,000 acre feet per Year of the Nation's CAP water for the Sif Oidak District.

9.6.1.1 The Nation is obligated for the repayment of total reimbursable costs of construction of the CAP System allocated to delivery of irrigation water in accordance with section 402 of the Basin Project Act. Pursuant to section 402 of the Basin Project Act, (1) repayment of the

construction costs allocated to the delivery of irrigation water to lands of the Nation's Reservation and within the repayment capacity of such lands shall be deferred until such time as the lands are converted to non-Indian ownership, and (2) repayment of the construction costs allocated to delivery of irrigation water to the lands of the Nation's Reservation and beyond the repayment capability of such lands shall be nonreimbursable.

9.6.1.2 The Nation shall be responsible for payment to the United States or the CAP Operating Agency of CAP water service capital charges associated with the delivery of the 8,000 acre-feet per Year of CAP water for the Sif Oidak District in the event that (1) any of the Sif Oidak District lands are converted to non-Indian ownership, and (2) this water is converted to municipal and industrial (M&I) use.

9.6.1.3 The Nation shall be responsible for payment to the United States or the CAP Operating Agency for the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge associated with the delivery of the 8,000 acre-feet per Year of CAP water that is not covered by the Lower Colorado River Basin Development Fund.

9.6.1.4 Repayment will be made in accordance with applicable Federal Reclamation law. The Nation agrees to make all required payments associated with the delivery of the 8,000 acre-feet per Year of the Nation's CAP water for the Sif Oidak District on such terms and conditions as may be agreed to by the Contracting Officer and the Nation.

10 ENVIRONMENTAL COMPLIANCE: Notwithstanding any other provision of this Amended Contract, the United States will not deliver Project Water through Distribution Works to the Nation's Reservation until additional environmental analyses, as necessary, relating to the Distribution Works have been completed by the United States in accordance with the National Environmental Policy Act, and the design of Distribution Works suitable for delivery of Project Water to the Nation pursuant to the terms of this Amended Contract is thereafter approved by the Secretary, it being the intent of the Parties hereto that such approval is to be based on environmental considerations related

only to the Distribution Works.

11 GENERAL PROVISIONS:

11.1 Water and Air Pollution Control. The Nation, in carrying out this Amended Contract, shall comply with all applicable water and air pollution laws and regulations of the Nation and the United States, and shall obtain all required permits or licenses from the appropriate authorities of the Nation and the United States.

11.2 Quality of Water. The OM&R of the CAP System shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the Contracting Officer. Neither the United States nor the CAP Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

11.3 Compliance With Federal Reclamation Laws. The delivery of water or the use of Federal facilities pursuant to this Amended Contract is subject to applicable Federal Reclamation laws.

11.4 Books, Records, and Reports. The Nation shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Amended Contract as the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Amended Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Amended Contract.

11.5 Notices. Any notice, demand, or request authorized or required by this

Amended Contract shall be deemed to have been given, on behalf of the Nation, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006-1470, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Tohono O'odham Nation, P.O. Box 837, Sells, Arizona 85634-0837, with a copy mailed to P.O. Box 830, Sells, Arizona 85634. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this section for other notices.

11.6 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any obligation by the United States under this Amended Contract shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allocated.

11.7 Assignment Limited – Successors and Assigns Obligated. The provisions of this Amended Contract shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Amended Contract or any part or interest therein shall be valid until approved in writing by the Contracting Officer.

11.8 Officials Not to Benefit. No member of or delegate to Congress or official of the Nation shall benefit from this Amended Contract other than as a water user or landowner in the same manner as other water users or landowners.

11.9 Equal Opportunity.

11.9.1 In accordance with the provisions of Title 42 U.S.C. 2000e-2(i), the Nation shall give preference in employment to Indians living on or near the Nation's Reservation.

11.9.2 Except as provided above, during the performance of this Amended Contract, the Nation agrees as follows:

11.9.2.1 The Nation will not discriminate against any employee or applicant

for employment because of race, color, religion, sex, or national origin. The Nation will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Nation agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

11.9.2.2 The Nation will, in all solicitations or advertisements for employees placed by or on behalf of the Nation, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

11.9.2.3 The Nation will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising said labor union or workers' representative of the Nation's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

11.9.2.4 The Nation will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

11.9.2.5 The Nation will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by

the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

11.9.2.6 In the event of the Nation's noncompliance with the nondiscrimination clauses of this Amended Contract or with any such rules, regulations, or orders, this Amended Contract may be canceled, terminated, or suspended, in whole or in part, and the Nation may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

11.9.2.7 The Nation will include the provisions of subsections 11.9.2.1 through 11.9.2.7 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Nation will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Nation becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Nation may request the United States to enter into such litigation to protect the interests of the United States.

11.10 Compliance with Civil Rights Laws and Regulations.

11.10.1 The Nation shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines

imposed by the Department of the Interior and/or Bureau of Reclamation.

11.10.2 These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Amended Contract, the Nation agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

11.10.3 The Nation makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts or other Federal financial assistance extended after the date hereof to the Nation by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Nation recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this section, and that the United States reserves the right to seek judicial enforcement thereof.

11.10.4 Rules, Regulations, and Determinations.

11.10.4.1 The Contracting Officer shall have the right to make, after an opportunity has been offered to the Nation for consultation, rules and regulations consistent with the provisions of the Amended Contract and the laws of the United States and to add to or to modify such rules and regulations as the Contracting Officer may deem proper and necessary to carry out this Amended Contract, and to supply necessary details of its administration which are not covered by express provisions of this Amended Contract. The Nation shall observe such rules and regulations.

11.10.4.2 Where the terms of this Amended Contract provide action to be based upon the opinion or determination of either party to this Amended Contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Nation questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Nation.

12 EXCEPTIONS TO APPLICATION OF CIVIL RIGHTS AND OTHER ACTS: The provisions of subsections 11.9 and 11.10 apply except where they conflict with sections 701(b)(1) and 703(i) of Title VII of the Civil Rights Act of 1964 (73 Stat. 253-257), which pertain to Indian tribes and to preferential treatment given to Indians residing on or near a reservation or other applicable laws which exclude applicability to Indians or Indian reservations.

13 CREDIT AGAINST WATER RIGHTS: At such time as the Nation's Water Rights with respect to the 8,000 acre-feet per Year of CAP water for the Sif Oidak District are finally determined, the Project Water delivered to the Nation under this Amended Contract will be credited against those Water Rights on such terms and conditions as may be agreed upon between the Secretary and the Nation at that time. Thereafter, the Nation may use that Project Water for any and all uses consistent with such Water Rights or the uses described in this Amended Contract. Until such time as the Nation's Water Rights with respect to the 8,000 acre-feet per Year of CAP water for the Sif Oidak District are finally determined, the Project Water delivered to the Nation is supplemental water and is not credited against, or in any way related to the Nation's Water Rights.

14 AMENDED CONTRACT AND SETTLEMENTS ACT: In the event that differences between the language of this Amended Contract and the Settlements Act result in ambiguity or confusion or


the provisions are inconsistent, the language of the Settlements Act shall govern.

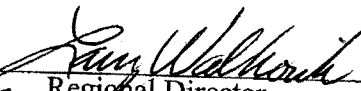
15 EXHIBIT MADE PART OF CONTRACT: Exhibit A is attached hereto and made part of this Amended Contract, and shall be in full force and effect in accordance with its respective provisions until superseded by a subsequent exhibit or exhibits executed by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Amended Contract the day and year first written above.

Legal Review and Approval:


THE UNITED STATES OF AMERICA

By: 
Field Solicitor
Phoenix, Arizona

By: 
Regional Director
For Lower Colorado Region
Bureau of Reclamation

ATTEST:

TOHONO O'ODHAM NATION

By: 


By: 
Chairperson

Exhibit A
Contract No. PAPAGO121180A
Amendment No. 1
Tohono O'odham Nation

**SECRETARY'S APPROACH FOR DETERMINING THE AMOUNT OF WATER
AVAILABLE TO THE NATION DURING A TIME OF SHORTAGE
UNDER 1980 CONTRACT**

1. This Exhibit A, made this 5th day of May, 2006, to be effective under and as a part of Contract No. PAPAGO121180A, as amended, hereinafter called "Amended Contract," shall become effective on the date of the Amended Contract's execution and shall remain in effect until superseded by another Exhibit A; Provided, That this Exhibit A or any superseding Exhibit A shall terminate with termination of the Amended Contract.
2. The following is the Secretary's approach for determining the amount of water available to the Nation during a time of shortage under the 1980 Contract, that is referred to in subarticle 6.8 entitled "Priority".

**Secretary's Approach for Determining
The Amount of Water Available to the Nation
During a Time of Shortage Under 1980 Contract**

If the Available CAP Supply is insufficient to fill all orders for CAP water, the Secretary shall take the following steps, in succession, as necessary to match the available supply with orders for the delivery of CAP water in each of the categories described below:

1. First, miscellaneous uses of CAP water are reduced, pro rata. If, after eliminating all miscellaneous uses of CAP water, there is still insufficient available CAP water to meet outstanding orders for the delivery of CAP water, the Secretary shall take the following measure.
2. Uses of CAP NIA Priority Water are reduced, pro rata. If, after eliminating all uses of CAP NIA Priority Water, there is still insufficient available CAP water to meet outstanding orders for delivery of CAP water, then the Secretary shall take the following measure.
3. Uses of CAP M&I Priority Water in excess of 510,000 acre-feet are reduced, pro rata. If, after eliminating all uses of CAP M&I Priority Water in excess of 510,000 acre-feet, there is still insufficient available CAP water to meet outstanding orders for delivery of CAP water, then the Secretary shall take the following measure.
4. If the preceding reductions do not bring CAP water orders in line with the Available CAP Supply, uses of CAP Indian Priority Water in excess of 291,574 acre-feet are reduced, in accordance with the Secretarial Decision published in the Federal Register on March 24, 1983.
5. If the preceding reductions do not bring CAP water orders in line with the Available CAP Supply, the available CAP water supply will be allocated between users of CAP Indian Priority Water and users of CAP M&I Priority Water on a 36.37518 and 63.62482 percentage basis, respectively.
6. If step 5 is implemented, the amount of water available for the Nation shall be determined by multiplying the amount of CAP Indian Priority Water by the ratio of the amount of water delivered pursuant to the Nation's CAP Water Delivery Contract in the latest non-shortage Year relative to the total quantity of water delivered to all CAP Contracts for Indian Priority Water in that same Year.